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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Attorney Docket No. 059284/0146**

In re application of: DUNN, Adam Peter *et al.*

Serial No.: 10/057,209

Filing Date: January 22, 2002

For: **SUBMERSIBLE MARINE VEHICLE**

**PETITION UNDER 37 CFR §1.47(A)**

Applicant hereby petitions that the PTO accept the present application without the signature of one of the joint inventors, Mr. Scott Roberts Kalkman, on the grounds that he refuses to sign the "Declaration and Power of Attorney" that was provided to him. The other three inventors wish to proceed on behalf of themselves and Mr. Kalkman.

Submitted with this petition is a declaration by Jason E. Lavender, attesting to facts surrounding Mr. Kalkman's refusal to sign the "Declaration and Power of Attorney" for this application.

Based on the foregoing, it is believed that applicant has satisfied the requirements of 37 CFR 1.47(a). Should Mr. Kalkman finally return the "Declaration and Power of Attorney" which is in his possession, it will be submitted promptly. Applicant believes that it has made more than sufficient attempts to obtain Mr. Kalkman's execution of documents in this case.

Respectfully submitted,

Date: September 25, 2002

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By

Jay P. Hendrickson  
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**DECLARATION**

Assistant Commissioner of Patents  
Washington, D.C.

Sir:

I, Jason E. Lavender, declare and state as follows:

1. I am a citizen of the United States of America, and an attorney for Foley & Lardner, the law firm representing ZAP, the owner of the subject matter claimed in the above-identified non-provisional patent application.

2. On January 22, 2002, on behalf of ZAP, we filed the non-provisional patent application identified above with the United States Patent and Trademark Office.

3. On March 27, 2002, we sent a letter to Mr. Gary Starr, chief executive officer of ZAP, enclosing a copy of the Notice of Missing Parts, and a Declaration and Power of Attorney for execution by Mr. Starr, Mr. Scott Roberts Kalkman, Mr. Adam Peter Dunn, and Mr. James R. Jeremias, all joint inventors of the above-identified invention. In the letter we instructed Mr. Starr to obtain the signatures of all of the joint inventors. Attached as Exhibit A is a copy of the letter that I sent to Mr. Starr.

4. On April 29, 2002, I received a letter from Mr. Starr informing us that Mr. Kalkman had refused to execute the Declaration and Power of Attorney and asking us to contact Mr. Kalkman directly. Attached as Exhibit B is a copy of the letter that I received from Mr. Starr.

5. On May 5, 2002, I telephoned Mr. Kalkman regarding his refusal to sign the Declaration. I informed Mr. Kalkman of the difficulty of proceeding without his signed Declaration and Power of Attorney. He indicated that ZAP should have had him sign the Declaration prior to his termination from ZAP.

6. In the latter part of May 2002, I telephoned Mr. Kalkman to inquire whether he would sign the Declaration. I was unable to reach Mr. Kalkman and left him a voice message. Mr. Kalkman failed to return my telephone call.

7. Further repeated telephone calls to Mr. Kalkman have gone un-returned.

8. On September 24, 2002, I again telephoned Mr. Kalkman and asked him to sign the Declaration. He stated that he would "look" at it. I immediately emailed the Declaration to Mr. Kalkman.

9. On September 25, 2002, I telephoned Mr. Kalkman about whether he planned to sign the Declaration. He again refused to sign the Declaration, stating that he would not sign it until he knew what he was going to get from ZAP for doing so.

10. The last known address that I have for Mr. Kalkman is as follows:

Mr. Scott Roberts Kalkman  
P.O. Box 1905  
Healdsburg, CA 95448

I hereby declare that all the statements made herein of my known knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements are so made punishable by fine or imprisonment, or both, under Section 101 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

9/25/02  
Date

Jason E. Lavender  
Jason E. Lavender